The 1 THOMAS McKEE TARPLEY 2 Law Firm A Professional Corporation GCIC Building 3 414 West Soledad Avenue, Suite 904 Hagåtña, Guam 96910 Telephone: (671) 472-1539 Fax: (671) 472-4526 Email: ttarpley@attorneyguam.com 4 5 JOHN D. OSBORN 6 Carlsmith Ball LLP Carlsmith Building, Capitol Hill P.O. Box 5241 Saipan, MP 96959-5241 7 8 Telephone: (670) 332-3455 9 Attorney for Defendant 10 11 IN THE UNITED STATES DISTRICT COURT 12 FOR THE NORTHERN MARIANA ISLANDS 13 14 CIVIL ACTION NO. CV-07-0015 IOTA PARTNERS, LTD., 15 Plaintiff, 16 v. 17 ANSWER AND COUNTERCLAIM SMITHBRIDGE GUAM, INC., 18 Defendant. 19 20 21 In answer to Plaintiff's complaint herein, Defendant admits and denies the 22 numbered allegations as follows. 23 1. Admits. 24 2. Admits. 25 3. Admits. 26 Admits. 4. 27 28

1	<u>PARTIES</u>
2	Defendant is without knowledge sufficient to form an answer
3	to this allegation, and therefore denies the same.
4	6. Admits.
5	<u>FACTS</u>
6	7. Admits.
7	8. Defendant is without knowledge sufficient to form an answer
8	to this allegation, and therefore denies the same.
9	9. Defendant is without knowledge sufficient to form an answer
10	to this allegation, and therefore denies the same.
11	10. Admits.
12	11. Denies.
13	12. Admits.
14	13. Denies.
15	14. Admits.
16	15. Admits.
17	16. Denies, and affirmatively alleges that it was Plaintiff who
18	requested wooden planks reinforced with concrete and that Smithbridge explained
19	to Plaintiff that the wood could crumble and float away, and requested for Iota to
20	clear marine life and the ecosystem were the planks would be placed prior to
21	laying the planks.
22	17. Admits.
23	18. Admits, but affirmatively alleges that Iota supplied the survey
24	information Smithbridge used for calculating the amount of planks required, and
25	that such information was false.
26	19. Admits, but affirmatively alleges that Defendant used the
27	information supplied by Iota for determining the number of planks required.
28	
1	I TOTA DADTNEDS ITD TO SMITHDDIDGE CHAM INC

1	20. Denies, and affirmatively alleges that the procedure was							
2	discussed and selected by both parties, and that the job would be constrained due							
3	to the fact that Smithbridge had only one long-reach excavator, a limitation							
4	acknowledged by Plaintiff.							
5	21. Admits.							
6	22. Admits.							
7	23. Admits.							
8	24. Admits.							
9	25. Defendant is without knowledge sufficient to form an answer							
10	to this allegation, and therefore denies the same.							
11	26. Admits.							
12	27. Denies, and affirmatively alleges that Smithbridge began its							
13	work on August 21, 2006, working under the direction of Iota who was in charge							
14	of the operation.							
15	28. Denies, and affirmatively alleges that lota was in charge of the							
16	operations, was present and never objected to Smithbridge's performance, and							
17	that Smithbridge, who was renting equipment and operator to Plaintiff, performed							
18	as directed.							
19	29. Admits, but affirmatively alleges that the breakage of the planks							
20	was due to the spacing of the planks being greater than planned because the							
21	information supplied by Iota was incorrect.							
22	30. Admits.							
23	31. Defendant is without knowledge sufficient to form an answer							
24	to this allegation, and therefore denies the same.							
25	32. Defendant is without knowledge sufficient to form an answer							
26	to this allegation, and therefore denies the same.							
27	33. Admits.							
28								

1	34.	Denies.
2	35.	Denies.
3	36.	Denies.
4	37.	Admits.
5	38.	Admits, but affirmatively alleges that Plaintiff failed to pay
6	Defendant all am	ounts due, as alleged in the counterclaim herein.
7	39.	Defendant is without knowledge sufficient to form an answer
8	to this allegation,	and therefore denies the same.
9	40.	Denies.
10	41.	Denies.
11		FIRST CAUSE OF ACTION BREACH OF CONTRACT
12		DREACH OF CONTRACT
13	42.	Smithbridge incorporates paragraphs 1 through 41 of its
14	answer herein.	
15	43.	Admits.
16	44.	Defendant is without knowledge sufficient to form an answer
17	to this allegation,	and therefore denies the same.
18	45.	Denies.
19	46.	Denies.
20	47.	Denies.
21	48.	Denies.
22	49.	Denies.
23		SECOND CAUSE OF ACTION NEGLIGENT MISREPRESENTATION
24		TO BE SHOULD THE STATE OF THE S
25	50.	Smithbridge incorporates paragraphs 1 through 49 of its
26	answer herein.	
27	51.	Denies.
28		

1	52.	Denies.
2	53.	Denies.
3	54.	Denies.
4	DDEACH OF	THIRD CAUSE OF ACTION
5	BREACH OF	WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE
6	55.	Smithbridge incorporates paragraphs 1 through 54 of its
7	answer herein.	
8	56.	Denies.
9	57.	Denies, and affirmatively alleges that Iota knew that
10	Smithbridge had	only one long-reach excavator, and further alleges that the
11	planks would hav	ve been suitable if enough of them had been manufactured and
12	paid for.	
13	58.	Denies.
14	59.	Denies.
15	60.	Denies.
16	61.	Denies.
17	62.	Denies.
18	63.	Denies.
19		FOURTH CAUSE OF ACTION DAMAGE TO BUSINESS REPUTATION
20		DIMINGE TO BOSINESS REFORMION
21	64.	Smithbridge incorporates paragraphs 1 through 63 of its
22	answer herein.	
23	65.	Denies.
24	66.	Denies.
25	67.	Denies.
26	68.	Denies.
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IOTA PARTNERS, LTD. v. SMITHBRIDGE GUAM, INC. CIVIL ACTION NO. CV07-0015 ANSWER AND COUNTERCLAIM 1

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AFFIRMATIVE DEFENSES

By way of further answer, Defendant raises the additional affirmative defenses as follows:

- 1. Waiver.
- 2. Estoppel.
- 3. Iota repeatedly represented to Smithbridge prior to the start of work that the depth of the water to the reef averaged only 2.5 feet, but the true working condition was that this lagoon was only shallow enough for the excavator to operate approximately only two hours a day, and this was a chief reason for Plaintiff's lack of productivity on the project.

COUNTERCLAIM

By way of counterclaim against Plaintiff herein, Defendant alleges that Plaintiff still owes Smithbridge the sum of \$38,964.09 for labor and equipment furnished by Smithbridge to Plaintiff on the project which is the subject of this lawsuit. A breakdown of this claimed amount is attached hereto as Exhibit 1, and incorporated herein by this reference as if specifically pled.

WHEREFORE, Defendant prays that Plaintiff's complaint herein be dismissed with prejudice, Plaintiff taking nothing thereby, and for judgment in Defendant's favor in the amount of \$38,964.09, plus interest and costs of suit.

Dated this _____ day of September, 2008.

THOMAS McKEE TARPLEY, Attorney for Defendant SMITHBRIDGE GUAM, INC.

EXHIBIT 1

Rota Dredge IOTA Billings

Description	Amount	Discount (30%)	Net Amount	Total Due	Payments	Balance
Deposit #1 (7/18)			:		20,000.00	20,000.00
Deposit #2 (8/4)					100,000.00	120,000.00
Invoice upon mobilization (ACTUAL)						,
Pre-streesed panels	(111,650.00)	33,495.00	(78,155.00)			
Breaker	(20,000.00)	6,000.00	(14,000.00)			
Mobilization	(20,100.00)	6,030.00	(14,070.00)			
Insurance ,	(5,000.00)	1,500.00	(3,500.00)	(109,725.00)		10,275.00
Week ended 8/13 (ACTUAL)						
50 ton excavator (stand-by Th~Su)	(4,571.43)	1,371,43	(3,200.00)			
250CFM compressor (stand-by Th~Su)	(471.43)	141.43	(330.00)			
Water truck (stand-by Th~Su)	(428.57)	128.57	(300.00)			
Operators (2 at \$500/day for Th~Sa)	(3,000.00)	900.00	(2,100.00)			
Foreman (1 at \$650/day for Th~Sa)	(1,950.00)	585.00	(1,365.00)		ļ	
Airfare (2 Operators & Foreman)	(498.72)	149.62	(349.10)	(7,644.10)	ļ	(4,444.10
Deposit #3 (8/11)					50,000.00	45,555.90
Mark and 4000 (AOT/JAL)						
Week ended 8/20 (ACTUAL)	(0.000.00)	0.400.00	(5.000.00)	j		
50 ton excavator (stand-by M~Su)	(8,000.00)	2,400.00	(5,600.00)			
250CFM compressor (stand-by M~Su) Water truck (stand-by M~Su)	(825.00)	247.50 225.00	(577.50)			
Operators (2 at \$500/day for M~Sa)	(750.00)	1,800.00	(525.00)			
Foreman (1 at \$650/day for M~Sa)	(6,000.00) (3,900.00)	1,170.00	(4,200.00) (2,730.00)	(13,632.50)		31,923.40
Week ended 8/27 (ACTUAL)						
50 ton excavator (Th~Su)	(9,142.86)	2,742.86	(6,400.00)	Ì		
50 ton excavator (stand-by M~W)	(3,428.57)	1,028.57	(2,400.00)		1	
250CFM compressor (Th~Su)	(942.86)	282.86	(660.00)	I		
250CFM compressor (stand-by M~W)	(353.57)	106.07	(247.50)		}	
Water truck (Th~Su)	(857.14)	257.14	(600.00)			
Water truck (stand-by M~W)	(321.43)	96.43	(225.00)		ì	
Operators (2 at \$500/day for 7 days)	(7,000.00)	2,100.00	(4,900.00)	Ì		
Foreman (1 at \$650/day for 7 days)	(4,550.00)	1,365.00	(3,185.00)	(18,617.50)	Ì	13,305.90
Week ended 9/3 (ACTUAL)						
50 ton excavator (M~W,F)	(9,142.86)	2.742.86	(6,400.00)			
50 ton excavator (stand-by Th)	(1,142.86)	342.86	(800.00)			
250CFM compressor (M~W,F)	(942.86)	282.86	(660.00)			
250CFM compressor (stand-by Th)	(117.86)	35.36	(82.50)			
Water truck (M~W,F)	(857.14)	257.14	(600.00)			
Water truck (stand-by Th)	(107.14)	32.14	(75.00)			
Operators (2 at \$500/day for 7 days)	(7,000.00)	2,100.00	(4,900.00)			
Foreman (1 at \$650/day for 7 days)	(4,550.00)	1,365.00	(3,185.00)			
Car Rental & Labor for Alvin Ogo	(2,090.00)	1,303.00	(2,090.00)	(18,792,49)		(5,486.59
Note: Excavator down starting Saturday	(2,000.00)		(2,030.00)	(10,702,70)		(0,700.00

Rota Dredge IOTA Billings

Description	Amount	Discount (30%)	Net Amount	Total Due	Payments	Balance
Week ended 9/10 (ACTUAL)						
50 ton excavator (down)		_	.			
250CFM compressor (down)		_	_			
Water truck (down)	_	_	.			İ
Operators (2 at \$500/day for 7 days)	(7,000.00)	2,100.00	(4,900,00)			
Foreman (1 at \$650/day for 7 days)	(4,550.00)		(3,185.00)	(8,085.00)		(13,571.59)
Note: Excavator down till Firday evening.	(1,22112)	,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,	(-,,	(2,22222)		(,.,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,
Week ended 9/17 (ACTUAL)						
50 ton excayator (Th&F)	(4,571.43)	1,371.43	(3,200.00)			
50 ton excavator (stand-by M~W)	(3,428.57)	1 ' 1	(2,400.00)			
250CFM compressor (Th&F)	(471.43)		(330.00)			
250CFM compressor (stand-by M~W)	(353.57)	1	(247.50)			
Water truck (Th&F)	(428.57)	128.57	(300.00)			
Water truck (stand-by M~W)	(321.43)	96.43	(225.00)			
Operators (2 at \$500/day for 7 days)	(7,000.00)	2,100.00	(4,900.00)			
Foreman (1 at \$650/day for 7 days)	(4,550.00)	1,365.00	(3,185.00)	(14,787.50)		(28,359.09)
Week ended 9/24 (ESTIMATED)						
Operators (2 at \$500/day for M)	(1,000.00)	300.00	(700.00)			
Foreman (1 at \$650/day for M)	(650.00)	195.00	(455.00)			
Operators (1 at \$500/day for Tu&W)	(1,000.00)		(700.00)			
Demobilization	(12,500.00)		(8,750.00)	(10,605.00)		(38,964.09)
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